

# NOMINATION OF PETER J. EIDE

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## HEARING

BEFORE THE

### COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON THE

NOMINATION OF PETER J. EIDE, TO BE GENERAL COUNSEL, FEDERAL  
LABOR RELATIONS AUTHORITY

APRIL 10, 2003

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## NOMINATION OF PETER J. EIDE

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THURSDAY, APRIL 10, 2003

U.S. SENATE,  
COMMITTEE ON GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 9:38 a.m., in room SD-342, Dirksen Senate Office Building, Hon. George Voinovich presiding.

Present: Senators Voinovich, Akaka, and Durbin.

### OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. Good morning. I want to thank you for coming, Mr. Eide.

Today, the Committee on Governmental Affairs meets to discuss the nomination of Peter Eide for the position of General Counsel at the Federal Labor Relations Authority.

I would like to extend a warm greeting to Mr. Eide and his family that are here in attendance. Senator Akaka and I have had a chance to meet your daughter Cheryl and son-in-law Ray, and grandchildren Savannah and Austin, and daughters Karalyn Eide and Merissa Eide. We are glad you are here today.

Mr. Eide, I strongly believe in the nobility of public service and I commend you for answering the President's call to serve our Nation. Your qualifications include extensive labor management relations experience, first as an employee, and president of the local union at the National Labor Relations Board, and then in the private sector. As General Counsel, your responsibilities would include managing the OGC's seven regional offices, processing unfair labor practice allegations, encouraging the use of alternate dispute resolution techniques, and promoting stable and productive labor management relations in the Federal sector.

As a former mayor and governor, I understand the importance of establishing positive labor management relationships based on open communication and trust. During my career I have worked conscientiously to bring people together and when I came to the Senate I embarked on a bipartisan approach to solve our government's human capital challenges. I must say that Senator Akaka has been my partner in this endeavor.

During this Committee's consideration of the homeland security legislation, last July, I worked with Senator Akaka to add key provisions of my human capital bill. The bipartisan effort made necessary changes in the Federal personnel policy to allow Federal agencies the flexibility to get the right people with the right skills and knowledge at the right place and time.

Also during the homeland security debate I strongly encouraged the President to meet with unions to discuss their concerns about the homeland security bill. I do not know whether you know this or not, but the unions believed that they were being excluded from the process because of the President repealing the Executive Order establishing labor management partnerships which had been in existence with the previous administration. I encouraged the administration to continue the partnership agreement, and unfortunately it did not happen. So I understand why the unions are concerned and I would hope that you might encourage the administration to review the partnership agreement. I think it would help foster better labor/management partnerships.

In addition, the administration issued an Executive Order barring unions from the U.S. Attorney's Office. This issue came up, Mr. Eide, in an unusual way and it worked its way through the system and ended up before the Board, which became irrelevant during the process because the President pre-empted the Board's decision by issuing the Executive Order exempting unions from the Office of U.S. Attorneys.

So there is a problem here, and I think we need to work on it. Kay James, who is the head of the Office of Personnel Management is aware of it, and we have worked with some of the folks that are involved.

I was pleased with the new Homeland Security law, which maintains the employee's right to organize and bargain collectively. I am also glad that the administration is following through with its commitment to consult with all stakeholders as it develops the Homeland Security's personnel system. Thus far this process seems to be going all right. I talked with the union presidents and trust that this is going to be an open and collaborative process that will yield a flexible personnel system that is fair to all employees.

Further, I hope we can enact additional provisions to give all of our Federal employees the tools they need to do their jobs effectively.

If you are confirmed, I expected that you will do everything in your power to ensure that the Department of Homeland Security's labor management relations apparatus is administered within the spirit of the law, and that unfair labor practices rulings are applied without prejudice throughout the government.

I hope you take a very active role in improving labor management relations and that you aggressively pursue a program that would provide training to Federal employees on the benefits of consensus decisionmaking techniques for resolving workforce disputes.

To begin this endeavor, I suggest that you conduct a thorough assessment of the current labor management relations environment and utilize the expertise of the new chief human capital officers to accomplish this goal. This is a major highlight of my legislation because it creates a chief human capital officer in 24 major departments and agencies. We have not had them. We have neglected the real important essential of government today, and that is people.

I have observed Congress as a mayor and then as governor and as chairman of the National Governors Association, and also president of the National League of Cities. And I think it is atrocious

that the Federal Government's workforce has not been given the kind of attention that is needed.

The General Counsel of the FLRA, in my opinion, is a very important position. How well you do that job will have a large impact on whether we can develop effective labor/management partnerships in government today. The unions must feel that the process is open, that they have somebody in your position aggressively trying to make sure that a dialogue exists, and frankly by doing that you may eliminate the need for people to appeal. It is also important to make sure that employees and managers are treated fairly and consistently based on the guidelines of the Federal Labor Relations Statute.

So I look forward to your testimony today to hear how you plan to apply your extensive private sector experience to the government and to learn what steps you have taken to prepare for this important position.

I would now like to call on Senator Akaka to give him an opportunity to make his opening statement, and then we will open it up for your statement.

#### **OPENING STATEMENT OF SENATOR AKAKA**

Senator AKAKA. Thank you very much, Mr. Chairman.

It is always a pleasure to work with you, especially to work with someone who I call a champion on human capital. I look forward to continuing to work with you on that. And it is a pleasure for me to be with you this morning and with Senator Durbin, as well.

I want to add my welcome to Mr. Eide and your lovely and handsome family. The only thing I can say is you are really a fortunate man to have such a family.

Mr. EIDE. That I am.

Senator AKAKA. Just 2 days ago my friend from Ohio chaired a hearing with our House counterparts on the Federal workforce. I was unable to attend that meeting because Tuesday was the first day of a 3-day Energy Committee markup. That is the kind of problem we have here. We are members of other committees, and when we have important markups, we have to be at those meetings.

But I wanted to be here today because I feel that the government's most important asset is its employees.

Mr. Eide, I want to congratulate you for being nominated to serve as the General Counsel of the Federal Labor Relations Authority.

The FLRA is charged with protecting the rights of Federal employees from unfair labor practices. Because of your prior relationships and your jobs in the private sector, there have been some concerns. Concerns have been raised by the American Federation of Government Employees and the National Treasury Employees Union about your long association with the U.S. Chamber of Commerce. The reason is they regard the Chamber as an organization that has opposed most labor initiatives.

Mr. Chairman, I ask that letters from AFGE and NTEU be included in the record, as well as a letter from the Association of Administrative Law Judge's in support of Mr. Eide's nomination.<sup>1</sup>

<sup>1</sup> The letters submitted by Senator Akaka appear in the Appendix on page 54.

Senator VOINOVICH. Without objection.

Senator AKAKA. The FLRA will face major challenges involving the creation of the labor management relations policy at the new Department of Homeland Security. The sheer number of employees within the Department and the ability of the Department to waive Chapter 71 of Title 5 relating to labor management relations undoubtedly will increase the workload at the FLRA. It may also pose unique legal and policy questions for the authority and for the General Counsel.

I look forward to this hearing, Mr. Chairman, and I want to thank you for having it today. Thank you.

Senator VOINOVICH. Thank you, Senator Akaka. Senator Durbin.

#### **OPENING STATEMENT OF SENATOR DURBIN**

Senator DURBIN. Thank you, Mr. Chairman.

I ask that my opening statement be made part of the record. In the interest of time, I have a Judiciary Committee hearing, and I will waive making a statement at this point. I hope I will have a chance to ask some questions.

[The prepared statement of Senator Durbin follows:]

#### **PREPARED OPENING STATEMENT OF SENATOR DURBIN**

Thank you, Mr. Chairman, for calling this hearing. I would like to welcome Mr. Eide. Thank you for testifying this morning.

The Federal Labor Relations Authority (FLRA) serves as an independent, neutral third-party for resolving labor-management disputes in the Federal Government. The Office of the General Counsel is the FLRA's independent investigator and prosecutor.

Mr. Eide, if confirmed for this position to which you have been nominated, you will have the important responsibilities of investigating all allegations of unfair labor practices filed and processing all representation petitions received; exercising final authority over the issuance and prosecution of all complaints; supervising and conducting elections concerning the exclusive recognition of labor organizations and the certification of the results of elections; conducting all hearings to resolve disputed issues in representation cases; preparing final decisions and orders in these cases; and directing and supervising all employees of the regional offices.

I ask that letters submitted to the Committee in relation to this nominee be made part of the record. I look forward to hearing your testimony, Mr. Eide.

Senator VOINOVICH. Thank you.

Mr. Eide has filed responses to a biographical and professional questionnaire, answering pre-hearing questions submitted by the Committee, and has had his financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made a part of the record with the exception of the financial data, which are on file and available for public inspection in the Committee offices.<sup>1</sup>

Mr. Eide, our Committee rules require that all witnesses at nomination hearings give their testimony under oath. If you would please stand.

[Witness sworn.]

Senator VOINOVICH. Now, I would like to hear from you.

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<sup>1</sup>Biographical and professional information for Mr. Eide appears in the Appendix on page 16.



**TESTIMONY OF PETER J. EIDE,<sup>1</sup> TO BE GENERAL COUNSEL,  
FEDERAL LABOR RELATIONS AUTHORITY**

Mr. EIDE. I have a few written comments, I would like to read that, and then answer your questions, if that is all right.

Good morning, Mr. Chairman, and Members of the Committee. My name is Peter Eide. President Bush has nominated me for the position of General Counsel to the Federal Labor Relations Authority.

I am truly honored and deeply appreciative and I would like to express my sincere gratitude to you for this opportunity to appear before you.

Thank you, Mr. Chairman and Mr. Vice Chairman, for going into the introductions that I had planned to make now. My family members are behind me, sitting behind me. And you certainly stated their names and indicated who they were, so thank you for that. This is a momentous occasion for this family, and I thought it would be good if they could witness it firsthand.

I would like to assure you that, if confirmed, I will enforce in a fair and consistent manner the Federal Service Labor Management Relations Statute, the decisions and regulations of the Federal Labor Relations Authority, and I will effectuate the statutes and regulations affecting all employers and employees, including especially those focused primarily on Federal Government employees.

I am familiar with many of the statutes and regulations affecting employment in the Federal sector, having dealt with them directly or on behalf of the public and clients for nearly 28 years.

As you know, the Federal statute that I will apply and enforce is modeled on the National Labor Relations Act, a statute I enforced as an employee of the National Labor Relations Board for over 7 years, and which I have dealt with directly on behalf of employers, clients, and the business community for over 20 years.

Members of the Committee and your staff of the Governmental Affairs Committee know, probably too well, that one of the biggest challenges we face is activating the Department of Homeland Security. Mr. Chairman, I think your comments reflected that concern.

I want to assure you that of everything I do, one of my highest priorities will be to make sure that activation is done smoothly and promptly so that the Department can carry out its mission to protect this country from terrorism and other serious threats.

I look forward to applying my years of labor law and labor relations experience in this position to which I have been nominated. I also assure you that I will be at all times responsive to the Governmental Affairs Committee and to the entire Senate and the Congress, as well.

Thank you for considering my nomination and I will gladly answer any questions that you have.

Senator VOINOVICH. Mr. Eide, before we start our questioning, there are some standard questions that we have to ask all nominees.

The first one, is there anything that you are aware of in your background which might present a conflict of interest with the duties of the office to which you have been nominated?

<sup>1</sup> The prepared statement of Mr. Eide appears in the Appendix on page 15.

Mr. EIDE. No, sir.

Senator VOINOVICH. Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. EIDE. I know of nothing that would interfere with my job.

Senator VOINOVICH. Do you agree to respond to any reasonable summons without reservation? Without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed.

Mr. EIDE. Yes, Senator, absolutely.

Senator VOINOVICH. We will start the first round of questions and we will limit those to 6 minutes.

Mr. Eide, in March 1999, President Clinton introduced a proposal to protect whistleblowers who were fired for speaking out against health and safety hazards in the workplace. President Clinton had a proposal to protect whistleblowers who were fired for speaking out against health and standards in the workplace.

In reactions to this proposed policy you said, the proposal would "open the floodgates to meritless charges, plaintiff's lawyers are all too willing to sue an employer with no intention of getting a verdict, simply to blackmail the employer to force him to pay off the plaintiff."

I am somewhat concerned that a past statement like this gives the impression that you might lack the objectivity necessary for the position of General Counsel.

So I would like to ask you a two-part question. First of all, are these your personal feelings, or were you merely reflecting the sentiments of the Chamber of Commerce?

And second, do you think that you can maintain the ability to remain neutral and apply the labor relations statute in a fair and equitable manner?

Mr. EIDE. I do not recall making that statement, nor will I deny making that statement. It is consistent with the Chamber's position regarding what has been called, what has been termed plaintiff's lawyers, and what the Chamber believes to be their overwillingness to file charges and lawsuits against employers.

What I said, and I am not denying I made that statement, is consistent with the Chamber's concern about overactive plaintiff lawyers and too many lawsuits against employers.

I said that as a representative of the Chamber, as a spokesperson for the Chamber. And I want to make sure that you understand that does not necessarily reflect my personal views. In fact, it does not reflect my personal views on that particular subject.

The concern about whistleblowers, I think, is genuine and has to be kept foremost in everybody's mind because that is the way that these problems in the workplace, these health and safety issues especially, are brought to light and corrected at the earliest possible date and in the most efficient way possible.

So I am not denying that I made the statement but that does not reflect my personal views. It does, I think, reflect the view of the U.S. Chamber of Commerce at that time.

Senator VOINOVICH. The issue is do you believe that you can bring impartiality to the job that you have and not be skewed in favor of the employer?

Mr. EIDE. Absolutely. I would like to point out that for the first 7 years, over 7 years of my career, I worked for the National Labor Relations Board. And the overwhelming majority of the cases that I handled and investigated and made recommendations on were charges against employers.

I think I did that job capably and did it well. And as a result of my efforts in investigating those charges, a number of complaints were issued and employers, as a result, settled the charges, settled the allegations, or were brought before Administrative Law Judge's and the entire labor board to have the issue resolved.

I do not think it is accurate to say that what I said as a representative of the Chamber and spokesman for the Chamber reflects on my objectivity or ability to address issues in an objective manner.

Senator VOINOVICH. Have you given any thought to initiatives to try and foster better labor management relationships?

Mr. EIDE. Yes, sir, I have. The authority, the OGC, Office of General Counsel has what I think is an elaborate program to encourage representatives of labor and representatives of management to get along, to air their disputes, to resolve their disputes before it becomes an issue in contract negotiations and they reach an impasse because of those disputes, to try to get those resolved.

I consider it a pretty elaborate program. I do not know if it is effective. It seems to me it would be effective. And I am anxious to engage in whatever activities I can and have my staff at the Authority do likewise, to encourage resolution of disputes before they have to be litigated.

Senator VOINOVICH. How would you determine whether or not the effort currently underway is a good one?

Mr. EIDE. How would I determine?

Senator VOINOVICH. You are coming on the job and you have got this in place. How would you go about deciding whether or not the initiative in the Department was a good one, or whether it needed improvement?

Mr. EIDE. The Authority's initiative? Is that what you are talking about?

Senator VOINOVICH. Yes.

Mr. EIDE. Obviously, I am going to have to talk to a lot of people, the staff of the OGC first and foremost, and then representatives of organized labor and management representatives and find out whether or not these programs and policies are working.

If they are not working, then they need to be changed and fixed. And I would be anxious to do that to make sure that the whole system works. It is referred to as the FITE program and I think that despite its name it would help the management and union folks resolve their disputes before they are brought to bear on the actual negotiations.

Senator VOINOVICH. Thank you. Senator Durbin.

Senator DURBIN. Senator Akaka has been kind enough to allow me to go first because of my other committee hearing, even though he was first to arrive.

Mr. Eide, thank you very much for being here.

A basic question, did you seek this job?

Mr. EIDE. Did I seek this job? I understood that there was an opening for the General Counsel at the Federal Labor Relations Authority, and I, after learning of that opening, asked the White House if they would consider me for the position.

Senator DURBIN. So you did?

Mr. EIDE. Yes.

Senator DURBIN. You did seek the job.

I am curious as to why you did that? I think there are a lot of positions in the Federal Government where your credentials would be impeccable. This is one that, as the Chairman has noted, raises a lot of questions about why, with your background with the Chamber of Commerce you would want to take on a position which is described under law as being a neutral party in the settlement of disputes that arise between Federal agencies and unions on matters outlined in the Federal Service Labor Management Relations statute.

In the past 12 years you have been very outspoken and very anti-union on behalf of the Chamber of Commerce. On issue after issue, statute after statute, you have questioned worker protections. You have supported the dilution of a variety of protections of workers. You opposed OSHA regulations on safety and health. You opposed provisions of the 1991 Civil Rights Act that provides compensatory damage remedies and jury trials for violations of the Americans with Disabilities Act. You advocated a policy that would exempt from employment discrimination laws for 18 months employers who hired former welfare recipients. You have consistently opposed increases in Federal minimum wages and other minimum wages.

Can you understand why the labor unions are a little bit worried if you are going to be their champion?

Mr. EIDE. Yes, sir, I can. I can also say that those positions that I took were as a representative of the Chamber. And as you know, the Chamber of Commerce is composed solely of businesses and employers and business associations. And their concern was what impact those laws that were under consideration at the time, or those regulations, would have on them.

My job, as spokesperson for the Chamber, was to state what the Chamber's concerns were and to effectively argue the Chamber's position.

Senator DURBIN. I understand that. I have been an attorney, too, and I know that you represent your client. But I am going to have to take you to the obvious question. I believe you are a man of principle. Are you saying then that you were stating positions which you did not personally agree with when you represented the Chamber of Commerce?

Mr. EIDE. I cannot say that applies to all of the issues that you raised. There were concerns that I personally had regarding some of the regulations that were proposed. The welfare reform statute is a good example. What we thought would be appropriate would be an exception for some employers for liability under various Federal discrimination laws, so that it would serve as an encouragement to hire people on welfare.

As it turned out, in that economic age or time period, there was a shortage of employees nationwide and it was not necessary to add an inducement for employers to hire people off of welfare.

Senator DURBIN. I only have a limited time, maybe 2 minutes left here.

I note in your biography that before law school, or perhaps at the same time as you were pursuing your legal education, you were a member of a public employees union, and I suppose a representative of that union, in the work that you were doing.

What would you say is the reason for unions? Why do you believe that we have unions today?

Mr. EIDE. I think that unions can provide a mouthpiece for an employee, for all employees, an effective mouthpiece. In my case, that was a situation where you had a management that required formal notification of what employees rights were and constant reminders of what employee rights were that might not be able to be conveyed to management by individuals and could easily be conveyed through a spokesperson. And I was that spokesperson at that time.

Senator DURBIN. Mr. Eide, in a 1997 article appearing in the Minneapolis-St. Paul *Star Tribune*, you were quoted in reference to the Fair Labor Standards Act. You said as follows: "the raison d'etre of unions is antagonism."

That is a harsh statement. If I am a member of a union or representing people in a union and I hear that you want to be my advocate now and you believe that the reason unions exist is to antagonize an employer, I am not sure I am going to get a fair shake from you.

What you have just stated was a union serves as a mouthpiece. If you had a little more time you might come up with a different word. I hope you will.

But I hope you understand that on this side of the table, this is a curious nomination by the administration. As I said, I can think of a hundred jobs that would be perfect for someone from the Chamber of Commerce. I do not think this is one of them. Thank you.

Senator VOINOVICH. Senator Akaka.

Senator AKAKA. Thank you, Mr. Chairman.

Mr. Eide, the General Counsel of the Federal Labor Relations Authority has broad prosecutorial discretion in determining whether to pursue allegations of unfair labor practices and operates, to a large extent, without review by the members of the Authority or any court. Refusal to pursue allegations of misconduct leaves the injured party without any legal recourse.

Given this considerable responsibility, what factors will you use in deciding whether to take such an action?

Mr. EIDE. To prosecute a case?

Senator AKAKA. Correct.

Mr. EIDE. There are a whole lot of factors to consider, that must be considered. What exactly happened to the individual? What is the complaint? What is the likelihood of it being resolved through methods other than litigation? What remedies can be provided to the individual if it, in fact, occurred, if the individual did in fact suffer some sort of discrimination or adverse impact? What is the

remedy that is involved and how will that be brought about? How can that be achieved through the system where the employee works?

Those are a few of the considerations. I think that has to be just some of them. There have to be a number of other considerations that would go through my mind, as well.

I cannot list them all right now, right offhand, but it is not something that is what you would call a slam dunk, by any means. It would have to be very deliberate and would require assessing a lot of facts, gathering and assessing a lot of facts in every single case.

Senator AKAKA. Legislation creating the Department of Homeland Security provided the new Department with great flexibility with its human resources management system. This includes the authority to waive or modify Chapter 71 of Title 5, which governs labor management relations.

Such authority could have major implications on how labor management relations are handled and what matters, if any, may come before your office. Do you have any recommendations as to what modifications should be made to Chapter 71 as it applies to the Department of Homeland Security.

Mr. EIDE. I do not have such a recommendation at this time. I am sure that I will develop some over time, but I cannot articulate those at this point. I simply do not know.

I know that there has to be some changes made. The Chairman's comments about human capital issues, and revising some issues in that area were intriguing because before I was a lawyer or a labor relations rep, I was a human resources manager and still am a member of the Society for Human Resources Management. I chose to follow my mother's footsteps rather than my father's footsteps. She was an human resource manager for many years. For some reason I took to that rather than my father's profession, pharmacy.

But I am familiar with the fundamental tenets of human resource management and I really appreciate the comments that the Chairman made about revisions to human capital issues and working that side of the homeland security problem or activation that I referred to earlier.

Senator AKAKA. I want to thank you, Mr. Eide, for your response. I hope you will keep this Committee updated on your activities and also on any recommended changes you may be proposing. As has been indicated here, there are concerns about your experiences and some of your comments, but I wish you well on this nomination.

Mr. EIDE. Thank you.

Senator AKAKA. Thank you very much, Mr. Chairman.

Senator VOINOVICH. Thank you Senator Akaka.

Mr. Eide, I would like you to do a couple of things. First one is to ask you to share your philosophy on labor management's relationships, and how you envision your job responsibilities.

And the second one would be what steps—maybe you ought to answer the latter question before the former. That is what steps have you taken thus far to prepare for this position?

Mr. EIDE. I have read a number of Authority cases. I have read large parts of the General Counsel's, former General Counsel's statements, guidance documents on labor relations and alternative dispute resolution.

I have read the statute carefully several times. I have amassed a very small library of reference documents regarding Federal Sector Labor Relations.

I have joined the ABA Section on Federal Sector Labor Law and become active in that group. I have become a member of the Society for Federal Labor Relations Professionals—I do not know if that is the correct name of the group—and attended their meetings.

And I have tried my best to become active in issues that involve Federal Sector Labor Relations.

I do not know what more I could have done. I held down a job in another area at the same time and was a single parent to one of the people sitting behind me.

So I did what I could and I look forward to doing a whole lot more as the situation will permit. Once I no longer have to have two jobs and worry about two sectors, the public sector and private sector, I can focus on the public sector, Federal sector work.

In answer to your other question, on my philosophy on labor management relationships, the quintessential labor management relationship, productive labor management relationship, was what I experienced when I was a labor management rep at Martin Marietta in Baltimore. There was a 2,000 person bargaining unit represented by the United Auto Workers. And the UAW had been there since the early 1940's or late 1930's, I believe. They had a very sophisticated relationship.

And I got to witness firsthand how management could, working with the union, resolve disputes early and thoroughly effectively, and refine disputes that could not be resolved easily or quickly so that they could be resolved at the next higher level, which usually involved corporate representatives and national union representatives or international representatives of the union. I witnessed those bargaining sessions, as well, and saw again firsthand how a very sophisticated and effective collective bargaining relationship works.

I appreciated the fact that the union was there, had been there for a long time and did have a great relationship with the company. The company appreciated that and they were able to do, I think, great things in their industry.

As you know, that company no longer exists but has been merged with another large defense contractor. And I think they still have the same relationship.

Senator VOINOVICH. I do not know the answer to this question. How many employees will you have? I know that you are in charge of seven regional offices. Do you know how many people you will actually be responsible for?

Mr. EIDE. Good question. I believe it is in the area of 90. It might be a few more or a few less, I am not sure.

Senator VOINOVICH. Have you had any management experience, 90 people, in terms of organizational experience? You have got regional offices, you have got people. What kind of experience have you had in that regard?

Mr. EIDE. In setting up regional offices?

Senator VOINOVICH. I am just talking about management experience generally. For example, the job that you have now, how many

people are you responsible for? Prior to this, the jobs that you have had, how many people were you responsible for, in terms of management?

Mr. EIDE. The direct line management relationship was not there when I worked at Martin Marietta. It was a dotted line relationship. I was in a position to advise line managers and section managers and section directors on how to achieve their human resources and labor relations goals, and when necessary, effectively recommend action, disciplinary action if it was necessary, in that area.

So it was not direct management relationship by any means, but it was certainly dotted line, and certainly involved in the management decisions and instrumental in what decisions were.

Senator VOINOVICH. How about when you were with the FLRB? Did you have any management responsibilities there?

Mr. EIDE. You mean at the National Labor Relations Board?

Senator VOINOVICH. Yes, the NLRB?

Mr. EIDE. Other than training employees, I was a senior examiner at the NLRB, and many new employees were assigned to work with me for varying lengths of time. My job was to train them and to supervise their daily activities, their daily work. Other than that, there was no direct management.

Senator VOINOVICH. How about the Chamber?

Mr. EIDE. Again, other than my personal staff, there is no direct management. However, the Chamber is, I think, an unusual operation because there is—a good example is I recently conceived and produced and directed a webcast show involving several people from OSHA and individuals from various companies.

My job was to coordinate all of the activities and have everybody at the Chamber do what they were supposed to do. The camera work, getting the web site ready, getting the information and the actual video presentation on the web site. Again, it was not direct management, it was getting people to do their jobs with respect to my particular interest and on a timely basis, and a thorough and competent basis.

Again, it was a—I like to describe it as a dotted line or matrix-type of operation. And that was successful and it is on the web site now. It is a webcast on ergonomics, of all things, and it can be viewed by going to the Chamber's web site.

Senator VOINOVICH. Is there anything else that you want to share with me this morning?

Mr. EIDE. No, I appreciate your having this hearing and considering the nomination and I stand ready to answer any questions that you may have.

Senator VOINOVICH. We are going to adjourn the hearing and we are going to leave the record open until 5 o'clock in case there are other Members of the Committee who were not able to be here.

I apologize, that is the way it is around the Senate. I have had a lot of these hearings, and sometimes I am the only one who is here. So we are lucky to have a couple of other Senators here.

Mr. EIDE. As you know, I am a lobbyist and I have seen umpteen hearings in both the House and the Senate.

Senator VOINOVICH. Then you understand. I just want to explain to your family. It is an important hearing. It is just that Senators,



at any given hour of the day we could probably be at three places and each of them is a legitimate use of our time.

So again, I want to thank you very much, and thank the family for coming here today with you, and we look forward to seeing you again.

As I say, we will leave the record open but I will recess the hearing

[Whereupon, at 10:22 a.m., the Committee was adjourned.]



# A P P E N D I X

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**U.S. SENATE  
GOVERNMENTAL AFFAIRS COMMITTEE  
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT,  
FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA**

**STATEMENT OF PETER EIDE  
NOMINEE FOR GENERAL COUNSEL OF  
FEDERAL LABOR RELATIONS AUTHORITY**

**APRIL 10, 2003**

Good morning Mister Chairman and Members of the Subcommittee. My name is Peter J. Eide. President Bush has nominated me for the position of General Counsel of the Federal Labor Relations Authority. I am appreciative of his nomination, and I would like to thank you for allowing me this opportunity. After spending my career working in the legislative and public policy arena, it is truly an honor to appear before you. I am grateful for your time and consideration.

If I may, I would like to take just a moment of your time to introduce my immediate family who has gathered here to witness a first for this family. All the way from Florida, my oldest daughter Cheryl Kiesel and her husband Ray. Their children, and my grandchildren, Savannah and Austin. A college student from Chapel Hill North Carolina, daughter Karalyn Amato Eide, and my youngest, Maryland native and current resident Merissa Eide.

I would like to assure you that, if confirmed, I will enforce, in a fair and consistent manner, the Federal Labor Management Relations Statute, the decisions and regulations of the Federal Labor Relations Authority, and effectuate the statutes and regulations affecting all employers and employees, including especially those focused primarily on federal government employees.

I am familiar with many of the statutes and regulations affecting employment in the federal sector, having dealt with them directly or on behalf of the public and clients for nearly 28 years. As you know, the federal statute that I will apply and enforce is modeled on the National Labor Relations Act, a statute I enforced as an employee of the National Labor Relations Board for over seven years and which I have dealt with directly on behalf of an employer, clients and the business community for over 18 years.

As the members and staff of this committee know, probably too well, one of the biggest challenges we will face is activating the Department of Homeland Security in a manner which enhances its ability to protect this country from terrorism and other serious threats. I am prepared to make that one of my highest priorities.

I look forward to applying my years of labor law experience in the position to which I have been nominated. I also assure you that I will be responsive to the Governmental Affairs Committee as well as the entire Senate and Congress.

Thank you for considering my nomination and I will gladly answer any questions you have.

## BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

## A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)  
Peter Jerome Eide
2. Position to which nominated:  
General Counsel, Federal Labor Relations Authority
3. Date of nomination:  
June 28, 2002
4. Address: (List current place of residence and office addresses.)  
Office – U.S. Chamber of Commerce, 1615 H Street, N.W., Washington, D.C., 20067-2000
5. Date and place of birth:  
April 24, 1952 St. Paul, Minnesota
6. Marital status: (Include maiden name of wife or husband's name.)  
Married – Laura Lacey Viehmyer (married name: Laura Viehmyer Eide)  
Separated on September 20, 2001 (agreement seek absolute divorce on or about 9/20/2002)
7. Names and ages of children:
8. Education: List secondary and higher education institutions, dates attended, degree received and date degree granted.  
N. Ft. Myers Jr.-Sr. High School, 1965-70, H.S., June 1970  
Edison Community College, 1970 – 1973, A.A., June 1973  
Florida State University, B.A. (cum laude), June 1975  
University of Maryland Law School, J.D., May 1985
9. Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)  
Please see Attachment A.
10. Government experience: List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.  
None.
11. Business relationships: List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.  
None.
12. Memberships: List all memberships and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.  
Please see Attachment B.

13. **Political affiliations and activities:**

- (a) List all offices with a political party which you have held or any public office for which you have been a candidate.  
None.
- (b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.  
Misc. services up to total of 10 hours on campaign of Alan Keyes for U.S. Senate (Md.), 1992  
Misc. services up to total of 10 hours on campaign of William Brock for U.S. Senate (Md.), 1994
- (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 5 years.  
\$178 to Republican National Committee, 2002  
\$50 to campaign to re-elect U.S. Representative Anne Northup (R-KY), 2002  
\$160 to Howard County Republican Party, 2002  
\$113 to Maryland Republican Party, 2002  
\$50 to NRCC, 2000  
\$76 to RNC, 2001  
\$100 to RNC, 2000

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.  
Two "Sustained Superior Performance" awards while employed at NLRB 1975 - 1983  
Bernstein Prize for Best Work in Labor Law, University of Maryland Law School, 1985  
Am Jur award for work in labor law, University of Maryland Law School, 1985

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.  
Please see Attachment C.

16. **Speeches:** Provide the Committee with four copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.  
Please see Attachment D.

17. **Selection:**

- (a) Do you know why you were chosen for this nomination by the President?  
No.
- (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?  
Please see Attachment E.

**B. FUTURE EMPLOYMENT RELATIONSHIPS**

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?  
Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.  
No.
3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?  
No.
4. Has anybody made a commitment to employ your services in any capacity after you leave government service?  
No.
5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?  
Yes.

#### C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.  
None.
2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy other than while in a federal government capacity.  
Please see Attachment F.
3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?  
Yes. Please see Attachment G.

#### D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.  
No.
2. To your knowledge, have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.  
No.
3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.  
No.

4. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

AFFIDAVIT

PETER J. EIVE being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.



Subscribed and sworn before me this 23rd day of July, 2002

  
Notary Public

Barbara B. Lewis  
Notary Public District of Columbia  
My Commission Expires 4-14-2004

ATTACHMENT A

## Question - A. 9.

Biographical and Financial Information Requested of Nominees

Peter J. Eide – Nominee, General Counsel, Federal Labor Relations Authority

**A. BIOGRAPHICAL INFORMATION**

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.

U.S. Chamber of Commerce	Washington, D.C.	1990 to present
Director, Labor Law Policy	2000 - present	
Manager, Labor Law Policy	1990 - 2000	

- Provided leadership of Chamber's efforts regarding new Department of Transportation regulations concerning maximum hours of service for commercial vehicle drivers.
- Developed and implemented business community positions on proposed labor and employment regulations and legislation, involving the National Labor Relations Act, the Civil Rights Act (Title VII), the FLSA, the ADA, the FMLA, the Occupational Safety and Health Act, various immigration statutes, and other similar laws and regulations.
- Lobbied members of Congress and government agencies (e.g., Dept. of Labor, Small Business Administration, Dept. of Transportation) on various labor and human resources issues.
- Wrote testimony for Congressional hearings and recruited witnesses.
- Formed, led and participated in numerous coalitions of businesses and business organizations to address proposed legislation and regulations.
- Addressed various organizations (e.g., ABA, South Carolina Employment Law Conference, Montana Arbitrators Conference, Ohio Employee Relations Conference, Ohio State OSHA Conference, Florida State SHRM Conference, Oklahoma Chamber of Commerce, Labor Committees of the Virginia and Alabama Chambers of Commerce) regarding above matters and related developments.
- Spoke frequently to a variety of audiences and led intensive Chamber efforts to encourage businesses to adhere to drug-free workplace principles in cooperation with the President's Office of National Drug Control Policy (ONDCP).



- Served as Chamber spokesperson, responding to media inquiries from Wall Street Journal, Bureau of National Affairs, Washington Post, National Public Radio, Investors Business Daily, New York Times, Washington Times, CBS Evening News, Los Angeles Times, Atlanta Journal, Inside OSHA, Newsday, and Congressional Quarterly, and others.
- Represented U.S. business community in several broadcast (radio and TV) talk shows or debates on various business-related labor or employment issues in Congress or subject to regulatory activity.

**Akin, Gump, Strauss, Hauer and Feld** Washington, D.C. 1988 - 1990

Associate - Labor and Employment Law

Represented national and regional clients in major labor and employment litigation. Represented clients in arbitration proceedings, minimum wage actions, claims for attorneys fees, wrongful discharge cases, employment contracts, at-will employment and other disputes.

**Piper & Marbury (now Piper Rudnick LLP)** Baltimore, MD 1987 - 1988

Associate - Labor and Employment Law

Represented management clients in labor and employment litigation, including NLRB unfair labor practice and representation disputes, wage and hour litigation, immigration matters, Title VII and ADEA litigation. Drafted opinion letters and analyzed impact of labor legislation.

**Martin Marietta Aerospace (now Lockheed Martin Corp.)** Balto., MD 1983 - 1987

Manager, Salaried and Professional Relations 1986 - 1987

Employee Relations Administrator 1983 - 1986

Managed employee relations for 2000+ employees, including management, engineering and other exempt staff. Handled discipline and discharges, EEOC and substance abuse cases, OFCCP investigations, NLRB charges and representation elections, promotions, grievances, etc. Developed and administered employee relations programs and positive employee discipline procedures. Investigated ethical misconduct and violations of company Code of Ethics. Assisted in national contract negotiations with the UAW. Negotiated and administered plant-wide collective bargaining contract covering 1700+ employees. Represented management in grievances, up to and including arbitration. Handled unemployment compensation cases and appeals as well as NLRB and EEOC charges.

**National Labor Relations Board** Baltimore, MD 1975 - 1983

Field Examiner

Investigated all types of unfair labor practice cases including unlawful strikes, secondary boycotts, bad-faith bargaining, duty of fair representation, etc. Hearing officer in complex election and objection cases involving multi-plant and multi-state units. Supervised the largest election in NLRB history involving over 21,000 employees at a national defense contractor. Conducted dozens of major representation elections including multi-state elections involving the supervision of numerous NLRB agents. Received several performance awards and commendations.

**ATTACHMENT B**

**Question - A. 12.**

Biographical and Financial Information Requested of Nominees  
 Peter J. Eide – Nominee, General Counsel, Federal Labor Relations Authority

**A. BIOGRAPHICAL INFORMATION**

**12. Memberships:** List all memberships and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

- American Bar Association, 1980 to present
  - Section of Labor and Employment Law, 1980 to present
  - Section on Litigation, 1999 to present
  - Advisory Committee, Standing Committee on Substance Abuse approx. 1997 to present
- The Federalist Society, 2001 to present
  - Section on Government Contracts
  - Section on Labor and Employment Law
- American Immigration Lawyers Association, 1987- 1990
- Society for Human Resource Management, 1983 to present
  - Area 2 Board of Directors and Maryland State Director, 1988 - 1993
  - Chair, Baltimore Chapter, Legislative Comm., 1985 - 1986
- SHRM Global Forum, approx. 1996 to present
- National Labor Relations Board Union, 1976 - 1983
  - President, Local 5, 1983
- Omega Tau Delta (college fraternity, now Tau Kappa Epsilon), 1970 -1973
- Student Government Association, Edison Community College
  - President, 1972 - 1973

**ATTACHMENT C**

**Question A. 15.**

Biographical and Financial Information Requested of Nominees  
Peter J. Eide – Nominee, General Counsel, Federal Labor Relations Authority

**A. BIOGRAPHICAL INFORMATION**

15. **Published Writings:** List the title, publishers, and dates of books, articles, reports. Or other published materials which you have written.

- Contributing author, The Volunteer Management Handbook, John Wiley & Sons, 1995. (Chapter title: Volunteers and Employment Law).
- “Wage Hike Would Spur Dangerous Ripple” Editorial in St. Louis Post-Dispatch, Sept. 13, 1993 (critical of Congressional efforts to increase minimum wage).
- “It’s Still a Bad Idea” Editorial in Cleveland Plain Dealer, Sept. 14, 1993 (same editorial as above).
- “Employers Need Control” Editorial in USA TODAY, March 3, 1995 (on employers’ right to monitor and control use of employer’s electronic equipment, e.g., computers).
- “Don’t Cut Jobs, Economy” Editorial in USA TODAY, January 18, 1995 (called the proposed minimum wage increase the “mother of all unfunded mandates” because of its effect on state and local governments).

**ATTACHMENT D**

**Question - A. 16.**

Biographical and Financial Information Requested of Nominees  
Peter J. Eide – Nominee, General Counsel, Federal Labor Relations Authority

**A. BIOGRAPHICAL INFORMATION**

16. **Speeches:** Provide the Committee with four copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

I have delivered dozens of speeches on a wide variety of business-related topics to audiences in various places throughout the country. The audiences included state and local chambers of commerce, various trade groups and associations, seminars on labor law issues, seminars on business and human resource management issues, employer and student groups. These speeches were delivered as a representative of the U.S. Chamber of Commerce or as a volunteer leader in the Society for Human Resource Management (SHRM) and were consistent with the Chamber’s, or SHRM’s, positions on the issues I addressed.

All of the above-referenced speeches were delivered from hand-written notes that I wrote and were not printed or distributed in any manner. Thus, to my knowledge, no part of these speeches, whether considered “formal” or otherwise, exist in a written form.

**ATTACHMENT E**

**Question A. 17(b).**

Biographical and Financial Information Requested of Nominees  
Peter J. Eide – Nominee, General Counsel, Federal Labor Relations Authority

**A. BIOGRAPHICAL INFORMATION**

**17. Selection:**

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

My academic and employment backgrounds (see question A.8., A.9., Attachment A, respectively), as well as my memberships (question A.12., Attachment B), my honors and awards (question A.14.), my published writings (question A.15., Attachment C), and my speeches (question A.16., Attachment D), clearly show a nearly exclusive professional focus on labor, collective bargaining, union, human resource management, employment law (both common and statutory) and organization management matters and issues, both national and as they apply to individuals and individual organizations, for 27 years. These activities have provided numerous and varied lessons and insights which I am prepared, able and anxious to utilize as General Counsel of the Federal Labor Relations Authority.

**ATTACHMENT F**

**Question C. 2.**

Biographical and Financial Information Requested of Nominees  
Peter J. Eide – Nominee, General Counsel, Federal Labor Relations Authority

**C. POTENTIAL CONFLICTS OF INTEREST**

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification or any legislation or affecting the administration and execution of law or public policy other than while in a federal government capacity.

Please see Attachment A.

For the past twelve years I have been employed as a full-time issue manager and lobbyist for the U.S. Chamber of Commerce, specializing in labor and employment laws and regulations as well as matters involving efforts to reduce the use and abuse of legal and illegal drugs in the workplace. I routinely meet with and talk to Members of Congress and Senators, as well as their staffs and their committee staffs, to discuss proposed legislation. I routinely meet with and talk to individuals (appointed or nominated, as well as career civil servants) representing government agencies.

**ATTACHMENT G**

**Question C. 3.**

Biographical and Financial Information Requested of Nominees  
Peter J. Eide – Nominee, General Counsel, Federal Labor Relations Authority

**C. POTENTIAL CONFLICTS OF INTEREST**

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Attached are copies of:

- Letter, dated July 11, 2002, from Amy L. Comstock of the Office of Government Ethics.
- Letter from Ms. Comstock to Chairman Lieberman.
- Letter from David M. Smith, Solicitor, Federal Labor Relations Authority and designated Agency Ethics Official with enclosed financial disclosure report.

**U.S. Senate Committee on Governmental Affairs  
Pre-hearing Questionnaire for Peter Eide  
to be General Counsel  
Federal Labor Relations Authority**

**I. Nomination Process and Conflicts of Interest**

1. Why do you believe the President nominated you to serve as General Counsel for the Federal Labor Relations Authority (FLRA)?

**I.1. Answer**

I believe the President views me as well-qualified, knowledgeable, competent and willing to achieve the goals of his Administration and his management agenda.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

**I.2. Answer**

No. There were absolutely no conditions, neither expressed nor implied.

3. What specific background and experience affirmatively qualifies you to be General Counsel for the FLRA?

**I.3. Answer**

After graduating with honors from Florida State University, I served over seven years as an investigator (Field Examiner) at the Baltimore Regional Office of the National Labor Relations Board (NLRB) during which I was responsible for handling numerous high-profile and legally complex cases involving alleged unfair labor practices and representation issues. In so doing, I conducted intense and thorough investigations, engaged in extensive legal research on established as well as novel legal issues, and prepared comprehensive memoranda recommending appropriate disposition of the issues presented.

During my tenure at the NLRB I became well acquainted with the federal sector collective bargaining process and became an active member of a local federal employee

union that represented the employees in the regional offices of the NLRB. I served on the local union's bargaining committee negotiating several local issues and as well as issues which arose with respect to the implementation of the national collective bargaining agreement. I later served as the President of the local union.

My long standing interest in labor law, coupled with the knowledge and experience acquired while employed at the NLRB, led me to pursue a legal education which, for financial reasons, I pursued in the evening division at the University of Maryland School of Law while working full-time at the NLRB and in subsequent positions.

For several years after working with the NLRB, I was employed in the private sector at a large aerospace manufacturer serving as a labor relations and employee relations manager for a bargaining unit of over 2000 employees represented by a large and very sophisticated national union and a salaried complement of 2000, most of whom were experienced and well-educated aerospace technicians and engineers.

For several years thereafter I practiced law (labor and employment, some immigration) at national law firms in Baltimore and Washington, followed by over 12 years as a Washington lobbyist and issue manager specializing in labor and human resources legislation and regulations.

I respectfully submit that the experience and education summarized above qualifies me for the position of General Counsel of the FLRA.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as General Counsel? If so, what are they and to whom have the commitments been made?

I.4. Answer

I made no such commitments but did indicate to a high-level representative of a large union which represents federal employees that I understood the positive aspects of, and would likely continue (if nominated and confirmed), frequent informal sessions with high-level representatives of federal employee unions and the agencies employing their members.

## II. Role and Responsibilities of the General Counsel for the FLRA

1. How do you view the role of Office of the General Counsel?

### II.1. Answer

The role of the Office of General Counsel (OGC) is to, among other things, conduct representation elections among federal employees, receive and investigate charges of violations of applicable sections of the Civil Service Reform Act of 1978 (5 U.S.C. 7101, *et seq.*), attempt to resolve those charges if meritorious and, absent resolution, prosecute them before the Federal Labor Relations Authority (FLRA). The OGC is responsible for management of the FLRA's regional offices and their staffs as well as training and education in labor relations issues and practices of labor relations professionals in the federal sector.

2. What challenges currently face the Office of the General Counsel? How will you as General Counsel address these challenges and what will be your top priorities?

### II.2. Answer

Should I be confirmed, I intend to convene a meeting of the senior staff of the Office of General Counsel (OGC), including all of the Regional Directors, to receive their considered views on all issues and challenges they believe need addressing. Shortly thereafter I will seek meetings with the leaders of labor organizations which represent federal employees as well as managers of the federal agencies that have employees represented (now or in the future) by such labor organizations to glean their suggestions on issues and challenges which should be addressed.

In addition to the information collected in the above-mentioned meetings, adherence to and compliance with the President's management agenda, which will always be a top priority, requires constant attention to the ongoing elements and initiatives described therein such as maintaining a focus on results, accountability and citizen-centered government; implementing knowledge management systems; assuring excellence in attaining outcomes important to the nation; acquisition and develop of a talented high-performance workforce and leadership, and; establishing and exceeding performance goals.



3. How do you plan to communicate to the Office of the General Counsel staff on efforts to address relevant issues?

II.3. Answer

I will, of course, conduct regular meetings with my immediate staff in Washington. In addition, I intend to spend time in the regional offices working with the OGC staff and their "customers" (federal employees, their unions and agency management).

4. In the biographical information provided to the Committee, you described your qualifications to be General Counsel of the Federal Labor Relations Authority as a "nearly exclusive professional focus on labor, collective bargaining, union, human resource management, employment law. . . and organization management matters." You stated that these activities have provided "varied ~~learning~~ insights" which you are anxious to utilize as General Counsel. Please provide specific examples of how this experience has prepared you for the General Counsel's position and the types of insights that would assist you in the performance of the duties of this position.

II.4. Answer

While serving as a Field Examiner at the Baltimore regional office of the National Labor Relations Board (NLRB) I conducted dozens of investigations of alleged bad-faith bargaining by parties to a new or established collective bargaining relationship. Such investigations frequently involved collecting detailed evidence regarding the substance of each of the parties' bargaining sessions. Each session consisted of a party's proposals, the other party's response, and lengthy discussions concerning the financial or other facts underlying each party's positions. Obviously, for most labor contract negotiating sessions, the evidence of each party's proposals, concessions, positions and arguments was voluminous and complex. Yet, a thorough investigation required complete review of the details of each bargaining session because determination of whether there had been a provable violation of the law (unfair labor practice or ULP) usually rested on the specific words and/or exact conduct of the negotiators. In addition, many cases required extensive research and legal analysis.

My NLRB experience allowed detailed review of collective bargaining in various settings and circumstances, but my subsequent work as a Labor Relations Manager at Martin Marietta (now Lockheed Martin) placed me in actual negotiations on a weekly basis as a party. Weekly sessions with the United Autoworkers (UAW) local and regional officials

dealt mostly with contract administration and grievance issues but often required discussion of bargainable issues not contemplated in the comprehensive national or local labor agreements. This role included preparations for national and local contract negotiations including development of company and corporate proposals and responses to likely union proposals, preliminary discussions with other management officials, strategy sessions with corporate officials and spokespersons, participation in actual national bargaining sessions, detailed strike preparations in some cases, and education of plant managers regarding the new agreement.

In my position at Martin Marietta I worked hard to develop personal relationships with all of the local union officials and representatives (e.g., shop stewards) so that we could jointly address actual and developing problems at the earliest opportunity and lowest possible level. Martin Marietta's collective bargaining relationship with the UAW dated back to the mid-1930s and must be characterized as extremely sophisticated. It was (and presumably still is), by anyone's measure, an example of nearly the highest level of a collective bargaining relationship in American industry.

Also while at Martin Marietta I became a member of and heavily involved in the Society for Human Resource Management, became an active member of its Government Affairs Committee, and later served as that organization's Maryland State Director. My role as a Salaried Employee Relations Manager at Martin Marietta gave me the opportunity to develop a comprehensive attendance control program as well as training programs for supervisors and managers concerning the requirements of Title VII of the 1964 Civil Rights Act and the corporate ethics program. This position, the only such position for 2000 employees not represented by the UAW, necessitated my service as the sole HR representative addressing the day-to-day needs of those employees and their managers. Often the issues raised by the managers concerned transfer and placement of engineers and technicians as well as methods of selecting and assigning work to those employees. Essentially, in this position I was responsible for fundamental issues of human resource management and management of human capital.

5. What federal sector labor law experience do you have? What public sector labor law experience do you have?

II.5. Answer

As noted above, I was represented by, and was a member of, the National Labor Relations Board Union (NLRBU) while employed by the NLRB. I was active in the union and served in several capacities including as a member of the bargaining committee and as president of the local. This experience was marked by several contentious contract

negotiations with agency management, one of which culminated with involvement of the Federal Services Impasses Panel (FSIP). I also conducted special tasks (primarily investigations) for national officers of the NLRBU.

6. Describe your philosophy regarding enforcement of the labor provisions contained in Chapter 71 of the Civil Service Reform Act of 1978 (Pub. L. 95-454). How do you respond to critics who are concerned that your extensive experience working on behalf of management will affect your approach to enforcing the labor provisions contained therein?

II.6. Answer

If confirmed as General Counsel, I will honestly, faithfully and to the best of my ability, enforce the Federal Service Labor-Management Relations Statute consistent with Congressional intent, decisions of the U.S. courts, and the decisions and regulations of the FLRA.

Any concern about my willingness or ability to enforce the above-mentioned statute and other applicable laws and regulations is misplaced. I have always (and will continue to) complied with and enforced federal labor laws and regulations to the best of my ability. My tenure at the NLRB, and subsequent years advising and guiding employers on related issues, clearly shows my reverence and respect for those laws and regulations. My experience working on behalf of management was preceded by experience working strenuously on behalf of employees, and often their unions, to enforce the National Labor Relations Act and other applicable federal labor laws.

7. What are the appropriate circumstances under which the regional directors should seek injunctive relief under 5 U.S.C. § 7123 (d)? What are your views regarding the factors currently set forth in the FLRA's Unfair Labor Practice Manual, Part 2, Chapter E, Injunctions?

II.7. Answer

Injunctive relief, both in the public and private sector, is an important statutory vehicle to preserve the status quo in appropriate cases. The statute frames the standard criteria by which cases are measured for potential injunctive relief. The regional directors should carefully consider injunctive relief in every case that meets the statutory criteria.

The factors set forth in the above-referenced ULP Manual are: the seriousness of the violation; legal precedent for the underlying alleged unfair labor practice; whether an injunction would disrupt the essential functions of the agency; timeliness of seeking injunctive relief; and remedy and harm to the right to organize and be represented. On the surface, these factors appear to be consistent with the statutory language set forth in 5 U.S.C. 7123(d). If confirmed, I intend to closely review how three factors have historically been applied by the General Counsel and whether any changes should be made in how these cases are processed and considered. Because the regional directors play such a vital role in injunction cases, I would want them to be a part of any such review.

8. Do you believe there is a need to modify any substantive guidance and policies issued by the General Counsel's Office? If so, which ones and in what respect?

II.8. Answer

Upon confirmation, I intend to implement a program of ongoing review and update of all outstanding OGC policies and guidance. Such review may reveal policies or guidance which should be modified, updated or otherwise amended. The program may also reveal the need for additional policies or guidance. I am not presently aware of any policy or guidance which should be modified.

9. Are there areas which you feel should be the subject of new substantive guidance? If so, what are they?

II.9. Answer

In accordance with my response to question no. 8 above, I am at this time unable to identify which areas, if any, would be appropriate for new substantive guidance.

10. Do you think that any organizational changes should be made in the General Counsel's Office? Do you think any changes should be made in the manner in which cases are handled? If so, what are they?

## II.10. Answer

At this time, I am unaware of the need for any organizational changes in the OGC. Fundamental management precepts require initial and continual consideration of organizational changes in any office or organization. Accordingly, if confirmed, I intend to conduct an initial assessment of the need, if any, for organization change in the OGC and to implement a program of continual reassessment of the need for any changes. The manner in which cases are handled throughout the OGC must similarly be constantly considered. I would call upon my immediate staff, as well as the Regional Directors, to participate in this assessment with a focus on maintaining a high quality and timely case handling process. I trust this ongoing process will identify which, if any, changes are required.

11. What, in your view, can be done to help prevent disputes from arising in the first place? Is there a role for the Office of the General Counsel in this regard and, if so, what should that role be?

## II.11. Answer

It is clear that one of the functions of the Office of General Counsel is to encourage cooperative labor-management relations. To fulfill that role I intend to review the current labor relations training programs conducted by the OGC with the objective of assuring compliance with the law, agency regulations, executive orders, the President's Management Agenda, and the suggestions of the OPM.

12. The previous General Counsel was interested in facilitating effective labor/management relations by methods such as providing training to labor and management regarding the statutory processes and methods for effectively dealing with conflicts, routinely making guidance and directives available to the public, and regularly meeting with Federal labor and management to discuss current labor-relations issues throughout the Federal government. (Testimony of Joseph Swerdzewski and Michael P. Forbes before the Senate Government Affairs Committee, October 2, 1998.)

What role, if any, do you expect to have in efforts to facilitate effective labor/management relations?

## II.12. Answer

Please see response to question 11 above. Executive Order 13203 expressly requires review of existing orders, regulations, guidelines and policies concerning cooperative/collaborative labor relations programs. Accordingly, I will assure compliance with applicable executive orders, the FSLMRS, FLRA case law, and all applicable regulations.

13. Are there any statutory or regulatory standards, policies or procedures related to the FLRA and its responsibilities with which you are in personal disagreement? If so, what are they? What action, if any would you take, to seek revisions of these statutory provisions or regulatory procedures? What action will you take to enforce these provisions, prior to any such changes?

## II.13. Answer

I am not aware of any statutory or regulatory standards related to the FLRA and its responsibilities with which I disagree. The procedures to secure changes to existing statutes and regulations are well-known and well-settled. I will encourage and expect full compliance with the statute and existing regulations.

III. Policy Questions

1. What is your assessment of the current state of labor-management relations in the federal government?

## III.1. Answer

Because I have worked in the private-sector for over 20 years, I have no first-hand knowledge upon which to base such an assessment. I note however, that OPM Director James suggested several elements to productive labor-management cooperation during the last year's Symposium on Employee and Labor Relations. I could not determine whether she was citing the need for implementation of such elements or was, instead, lauding such existing practices. She noted the following: including labor up front in the decision-making process, providing access whenever possible, maintaining a two-way street, both sides keeping their word, and both sides dealing honestly and with integrity.

2. What will be your long-term priorities as General Counsel?

III.2. Answer

If confirmed and after consulting OGC staff, I will establish several long-term and short-term priorities including, but not limited to:

1. Hire, train and retain qualified, diverse, knowledgeable and competent staff.
2. Develop and implement a training program for new OGC staff and refine training program(s) for current staff.
3. Establish positive and productive relationships with FLRA stakeholders -- unions and their leaders, agency managers and representatives, and federal employees.
4. Thoroughly review and amend, if necessary, OGC regulations, policies, procedures and guidance.
5. Develop and implement comprehensive OGC review, update and revision programs utilizing existing staff.

3. According to FLRA's fiscal year 1999 annual report, the number of unfair labor practice (ULP) complaints filed was about 5,700. For fiscal year 2001, this number had risen to more than 6,100. Do you have a sense for why this increase occurred? More importantly, do you have a sense for the issues and other factors that give rise to ULP complaints? If so, what are the issues and other factors that underlie ULPs and what can be done to help reduce the number of ULP complaints?

III.3. Answer

I do not know why there was an increase in the number of ULP complaints filed in FY 2001. My experience in handling thousands of ULP charges in the private sector (i.e., NLRB cases) suggests that ULP allegations can result from a wide variety of lawful and unlawful conduct by employers and labor organizations. A single alleged act, whether lawful or unlawful, can result in the filing of dozens of ULP charges, even though they all relate to the same incident. Yet each must be investigated in a prompt and thorough manner and given full consideration by the agency. My responses to questions II.1., II.11., and III.5., indicate my intent to encourage cooperative labor-management relations.

4. Concerns have been raised by some that some parties in contentious labor-management relationships in the federal sector may file frivolous ULP complaints? Do you know whether this occurs and, if so, how should such situations and complaints be dealt with?

III.4. Answer

I do not know whether parties (i.e., agency management, unions) file frivolous charges. One of the most effective methods of handling frivolous charges used by the NLRB when I worked at that agency was to process such charges as rapidly as possible, consistent with thorough case handling procedures. However, extreme care must be exercised to avoid perfunctory processing of possibly meritorious charges.

5. There has been increased use of alternative dispute resolution (ADR) to deal with disputes in the federal workplace, including those arising under the Federal Service Labor-Management Relations Statute. Some have pointed to the success of ADR in bringing about interest-based resolutions while reducing the adversarial nature of the process and improving relations between labor and management. Others have said that although ADR is a useful tool, an emphasis on the use of ADR could create undue pressures on the parties to reach settlements. What are your views on the use of ADR to resolve federal workplace disputes? Is there a role for the Office of the General Counsel in this regard and, if so, what should that role be?

III.5. Answer

The many varieties of ADR, including the OGC's FITE program (Facilitation, Intervention, Training and Education), give the parties to a collective bargaining relationship ample opportunity to seek and obtain prompt, thorough and voluntary resolution of their disagreements. Assuming the parties genuinely desire such resolution, the fundamental underlying ADR principles, and those individuals and institutions (including the OGC) promulgating them, are serving the purposes and policies of the FSLMRS as well as the entire federal government.

6. While ADR techniques can be helpful, in some situations, to resolving conflicts, what, in your view, can be done to help prevent disputes from arising in the first place and promote collaborative labor-management working relationships? Is there a role for the Office of the General Counsel in this regard and, if so, what should that role be?



## III.6. Answer

It appears to me that the basic principles of the OGC's FITE program (referenced immediately above in response to question 7) and the FITE program itself are designed to promote collaborative and cooperative labor-management relationships. However, although existing programs may suffice, the federal government and the expectations of its customers are constantly changing. Thus, the FITE program and other ADR elements should adapt to changed circumstances and expectations as well. That is why one of my priorities is to develop and implement comprehensive OGC review, update and revision programs.

7. The landscape of the federal workforce has changed over the last decade. More federal jobs have been contracted out or privatized, with federal and contract workers often working side-by-side. This trend is likely to continue under the Federal Activities Inventory Reform (FAIR) Act. What do you think have been the effects, if any, of this trend on federal labor-management relations?

## III.7. Answer

I do not know, nor can I speculate at this time, what effects, if any, there have been.

8. The creation of the Department of Homeland Security is bringing together 170,000 employees from 22 agencies. Many of these employees are covered under collective bargaining agreements and approximately 17 unions represent these employees. What are the implications of the formation of the Homeland Security Department on federal labor-management relations as it relates to the Office of the General Counsel's responsibilities?

## III.8. Answer

It is too soon to accurately assess the implications. Some are obvious given the nature and number of unions involved. For example, to the extent permitted by law and the exercise of executive discretion under applicable statutes, there may be a number of representation cases involving the creation or dissolution of collective bargaining units and corresponding collective bargaining relationships. To meet the potential demands presented by such issues, it may be necessary to reassign some cases among the regional offices.

9. Do you believe that improvements can be made to the Federal Service Labor-Management Relations Statute? If so, what improvements can and should be made?

III.9. Answer

To answer this question I will first need to assess the overall impact and effect of the FSLMRA by, among other things, talking to the unions and agencies regarding any changes which may be considered. That input along with a detailed review of past changes to the statute and/or the regulations may reveal a need for statutory changes.

10. Last Congress, Senators Collins, Bingaman, Grassley, and Daschle introduced S. 917, the Civil Rights Tax Relief Act of 2001. This bill would have amended the tax code to exclude from gross income amounts received by a claimant on account of claims based on unlawful discrimination. It also would have permitted income averaging for backpay and frontpay awards received based upon unlawful discrimination claims. The bill included violations of whistleblower protections and other discriminatory practices against Federal workers within the definition of what would qualify as unlawful discrimination. What is your opinion of this bill?

III.10. Answer

Passage of the Civil Rights Tax Relief Act of 2001 would facilitate prompt settlement of charges of unlawful discrimination. Theoretically, it would have a neutral impact, if any, on the alleged wrongdoers. It would foster prompt resolution and remedy of the alleged discrimination and thus allow the parties, both victim and alleged wrongdoer, to make the necessary corrections to prevent similar conduct. To that end the measure would effectuate the purposes and policies of the whistleblower and anti-discrimination laws. On behalf of the Chamber of Commerce, I joined and worked with the coalition coordinating lobbying efforts on behalf of employers and alleged victims.

11. Reportedly you have taken the position that unions will file complaints with a government agency as a technique to obtain recognition. (Source: Information Access Company, November 1992) Is it true that you have taken that position?

## III.11. Answer

I may have made a statement to that effect. It is widely-believed among private-sector employers that those dealing with union organizing drives among their employees are frequently, but not always, beset by a noticeable increase in the number of charges filed by employees and/or their unions with regulatory agencies such as the Occupational Safety and Health Administration, the Equal Employment Opportunity Commission and its state counterparts, the National Labor Relations Board, the U.S. Department of Labor, and other federal and state agencies regulating the workplace, as a means of encouraging the employer to agree to a union's recognition demands.

12. You described your work as a field examiner at the National Labor Relations Board as follows: "Investigated all types of unfair labor practice cases including unlawful strikes, secondary boycotts, bad-faith bargaining, duty of fair representation." Your experience arguably appears to reflect a specialization in unfair labor practices brought against unions. Is that true? How does this experience affect your view of unfair labor practices?

## III.12. Answer

I did not specialize in charges filed against labor organizations nor did I seek assignment to such charges. In fact, the vast majority of cases I handled involved charges against employers.

I handled a variety of complex unfair labor practice cases as well as some of the largest and most complex representation cases filed with any regional office of the NLRB. I processed every case assigned in a thorough and comprehensive manner consistent with agency policy. Recommendations that I made to the Regional Director as to the appropriate disposition of such cases were void of any bias and were based entirely on the evidence revealed by the investigation or hearing as well as the controlling case precedent.

13. In your capacity as an employee of the U.S. Chamber of Commerce, you were reported to have made a variety of public statements on behalf of the positions taken by the organization. These include, for example, the following:

a) Referring to immigrant child labor abuse: "I am sure it is a problem...[i]f it is occurring once, it is occurring too often. But this is an emotional issue that politicians have used to score easy points. And I might just point out that children may be better off in the sweatshops than in the streets selling drugs." (The Washington Post, April 14, 1991)

b) Referring to an executive order to deny federal contracts to businesses that hire illegal immigrants expected to be signed by former President Clinton as "a political payoff to his labor allies" and rules to block awards to contractors with a record of violating labor laws, "a gift to organized labor." (National Journal, Congress Daily, January 25, 1996; Bloomberg News, June 23, 1996)

c) Referring to proposed increases in federal minimum wages: "Not just no, but hell no. . . We always oppose a minimum wage increase." (Daily Labor Report, June 3, 1996)

Do these news reports accurately quote you? If not, in what respect are they inaccurate? Critics of your nomination might argue that statements such as these reflect a general antipathy toward the concerns of labor and suggest a lack of objectivity in matters involving disputes between labor and management. How would you respond to these critics?

Do you currently adhere to the views expressed above? If so, how will those views affect your objectivity in addressing labor/management issues?

### III.13(a). Answer

The above-cited quotes appear to be accurate. As to the child labor issue I would respond by citing my statement that if it is occurring once, it is occurring too often. In accordance with this statement, I will continue to support the eradication of child labor. With respect to the drug selling statement, my intended point was that we should work to eliminate child labor as well as other circumstances which may place children in even greater harm.

I fail to see how the above statements regarding child labor reflect a lack of objectivity concerning disputes between labor and management.

## III.13(b). Answer

The above-cited quotes appear to be accurate. Regarding the blacklisting quote, it is the position of the U.S. Chamber of Commerce that organized labor has for decades tried to enhance the penalties for violations of the National Labor Relations Act and other labor laws. On behalf of the Chamber of Commerce, I argued that those laws already provide ample remedies and that they both offer relief to victims of violations and deter future violations. Similarly, I argued on behalf of the Chamber that there is no need to encumber the federal acquisition process with another layer of investigations and determinations concerning alleged violations of those laws.

That I argued the Chamber and business community position opposing the blacklisting acquisition regulations cannot be seen as a lack of objectivity toward disputes between labor and management. Rather, my position must be seen as defending the status quo regarding Congressionally-mandated provisions to prevent and remedy violations of various labor laws.

## III.13(c). Answer

The above-cited quotes appear to be accurate. The U.S. Chamber of Commerce has opposed increases in the federal minimum wage since its inception. Of course a spokesperson for the Chamber will be quoted expressing the Chamber's long-standing and adamant opposition to an increase in the minimum wage. Having debated the issue in numerous places throughout the country, I am well-versed in the arguments for such an increase.

14. In your capacity as an employee of the Chamber of Commerce, you also made public statements regarding anti-discrimination laws. For example, it has been reported that, on behalf of the Chamber, you opposed provisions of the 1991 Civil Rights Act that provide compensatory damage remedies and jury trials for violations of the Americans with Disabilities Act and also advocated a policy that would exempt employers who hired former welfare recipients from the employment discrimination laws for 18 months. (Washington Times, November 5, 1991; Daily Labor Report, February 10, 1995)

Are these reports correct? If not, how are they inaccurate? Do you currently adhere to these views? If not, what is your view on these issues?

## III.14(1). Answer

The above-cited reports are essentially accurate. My statements regarding the 1991 Civil Rights Act and the damages provided therein, as well as the identity of any trier of fact, especially as they concerned the Americans with Disabilities Act (ADA), were made as an advocate for the U.S. Chamber of Commerce and/or a coalition of which it was a member. I accurately argued for a position which had been duly adopted by the Board of Directors of the U.S. Chamber of Commerce.

It should be noted that both my younger brother and I have multiple sclerosis (MS) and would surely be considered "disabled" under the ADA. My brother must use a wheelchair for mobility as well as other devices to help him manage the effects of MS. I am more fortunate in that my physical problems are, to date, limited to ambulatory problems similar those suffered by the late Senator Wellstone. Thus, I have great respect for the ADA as well as the beneficiaries of that law.

In the midst of welfare reform efforts in the 1990s it appeared that it would not suffice to simply end welfare payments without providing some hope of employment to former welfare recipients. Accordingly, the Chamber approved a plan to provide an incentive to employers to provide employment to previously unemployed long-term welfare recipients. On behalf of the chamber, I advocated adoption of a limited employment law exemption for employers who hired long-term welfare recipients. That approach was not adopted by Congress and, in hindsight, was probably unnecessary in the low unemployment periods of the early 1990s.

The attached resume states that while at the Chamber of Commerce you authored proposed amendments to Title VII of the Civil Rights Act of 1964. Is this resume accurate? What were the amendments? How do they reflect your own views?

## III.14(2). Answer

With regard to amendments to Title VII, that resume is accurate. The proposed amendments, approved by the Chamber's Labor Relations Committee, would revise the Equal Employment Opportunity Commission and its procedures so that it would operate in a manner similar to the NLRB. The intent was to expedite the initial handling and investigation of EEOC charges so that allegations of unlawful discrimination could be investigated and addressed in a prompt manner and any relief or remedies could be granted more expeditiously.

The General Counsel of the FLRA may encounter ULP complaints involving assertions of discrimination. How do you believe your views will affect your handling of unfair labor practice complaints involving such assertions?

III.14(3). Answer

I offered the amendments to Title VII of the Civil Rights Act of 1964 with the sole objective of providing prompt relief and a prompt remedy for unlawful discrimination so that the alleged wrongdoer and victim(s) could make the necessary corrections so others would not suffer the same or similar discrimination. In fact, any alleged discrimination would be far more readily proved (and thus remedied) by the government if the allegations were investigated and adjudicated promptly and thoroughly instead of many months or years after the alleged unlawful event.

As indicated earlier, if confirmed, I will faithfully, honestly, and to the best of my ability enforce the provisions of the FSLMRS. My views are entirely consistent with the effective and efficient enforcement of this important collective bargaining law.

15. The attached resume indicates that, in your capacity as an employee at the Chamber of Commerce, you "[c]reated and co-chaired the business community coalition opposing the proposed Occupational Safety and Health regulation on safety and health programs." It also indicates that you administered an "extremely successful national coalition of businesses and business associations opposed to OSHA ergonomics regulations not based on sound scientific and medical evidence." Do these activities reflect your views? Please explain your views. How would you respond to critics who might argue that, given your apparent record of work in opposition to workplace safety measures, you would not be objective regarding federal workers' concerns about workplace safety?

III.15. Answer

One of my major responsibilities at the U.S. Chamber of Commerce is to provide leadership within the business community in support of, or in opposition to, various legislative and regulatory initiatives. Upon learning of efforts by the leadership of the Occupational Safety and Health Administration to develop a standard (i.e., regulation) requiring all businesses to adhere to a prescribed comprehensive safety and health program in their workplaces, the Chamber, as well as representatives of major business associations, determined that a successful opposition to OSHA's effort would involve a concerted and well-orchestrated campaign on the part of the entire business community.

The business leaders I consulted unanimously opposed another comprehensive OSHA regulation which incorporated the highly objectionable provisions of OSHA's initial ergonomics requirements (explained below).

As OSHA proceeded with development of the standard, I was assigned to manage the Chamber's opposition to OSHA's planned standard and determined that a successful opposition would most likely have to be conducted in conjunction with others in the business community. Accordingly, I was assigned to spearhead the formation of an allegiance of several major business associations and their members to oppose OSHA's effort. The resulting coalition successfully mobilized members of the business community to oppose OSHA's efforts.

In the mid-1990s I gradually became active in the National Coalition on Ergonomics (NCE). This coalition of businesses and business associations had formed much earlier to coordinate opposition to OSHA's plans to develop and promulgate a comprehensive standard regarding ergonomics (later OSHA would adopt the term musculoskeletal disorders or MSDs to describe the injuries, afflictions, conditions and symptoms allegedly resulting from not fitting a person's work to his or her capabilities). Eventually, I assumed the role of treasurer of the NCE. As you know OSHA issued and reissued its broad ergonomics standard several times culminating with the issuance of a final standard in November, 2000. The NCE maintained throughout the 1990s, and to date, that there is not an adequate and sound scientific basis upon which to base a comprehensive ergonomics standard.

In March, 2001 the Senate and the House of Representatives passed a resolution invoking the Congressional Review Act provisions to nullify OSHA's new ergonomics standard. That resolution was signed by the President.

The NCE's concerns with the scientific basis, or lack thereof, of a comprehensive ergonomics standard are shared by the NAS, the entire Congress, and the President. I have for several years also worked hard to encourage compliance with other workplace health and safety measures and I would have no problem being completely objective regarding federal workers' concerns about workplace safety.

16. Representatives of the Office of the Inspectors General are representatives of the agency. Under what circumstances should IG's be held to the terms reached in collective bargaining agreements between agency heads and unions?

#### III.16. Answer

Inspectors General should be held only to those terms in a collective bargaining



agreement that do not conflict with the authority granted Inspectors General in the Inspector General Act (5 U.S.C. Appx.; Inspector General Act of 1978, §1, et seq.), NASA v. FLRA, 527 U.S. 229 (1999).

17. How would you compare your views to those of the current and former National Labor Relations Board General Counsels' on the appropriateness of injunctive relief in the private sector under 29 U.S.C. Sec. 160 (j)?

III.17. Answer

There have been many general counsels at the NLRB since enactment of section 160(j). I am not familiar with the views of all of these individuals, nor am I aware of the current general counsel's views. Injunctive relief is an integral part of the relief scheme of the Act. Under the NLRA it is, and was clearly intended by Congress to be, extraordinary relief sought only in unusual and dire situations. No NLRB General Counsel can seek or obtain an injunction under Sec. 160(j) without the approval of National Labor Relations Board itself.

IV. Relations with Congress

1. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

IV.1. Answer

Yes.

2. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

IV.2. Answer

Yes.

V. Assistance

1. Are these answers your own? Have you consulted with the FLRA or any interested parties? If so, please indicate which entities.

## V.1. Answer


These answers are my own. I have consulted with the FLRA on questions concerning the current situation at the FLRA. I have not consulted other interested parties.

## AFFIDAVIT

I, Peter J. Eide, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

  
\_\_\_\_\_

Subscribed and sworn before me this 13<sup>th</sup> day of March, 2003.

  
\_\_\_\_\_  
Notary Public

Barbara B. Lewis  
Notary Public District of Columbia  
Commission Expires 7-14-2004

**QUESTIONS FOR THE RECORD  
FROM SENATOR FRANK R. LAUTENBERG  
GOVERNMENTAL AFFAIRS COMMITTEE**

**NOMINATION OF PETER EIDE TO BE GENERAL COUNSEL OF THE  
FEDERAL LABOR RELATIONS AUTHORITY**

**Thursday, April 10, 2003**

**Question One:**

I understand that you have been an industry lobbyist and a practicing attorney for many years, and oftentimes the views you express in the press are not necessarily your own. I would like to give you this opportunity to explain your personal view regarding minimum wage because it seems like you've opposed every minimum wage increase that been has proposed in Congress for the past decade. Have you ever seen a minimum raise increase that you've liked and supported?

**Answer:**

The U.S. Chamber of Commerce has been opposed to the federal minimum wage and increases in that wage since its inception in the mid-twentieth century. As a spokesperson for the Chamber, I advocated its position on this and other labor issues. On behalf of the Chamber, I supported efforts to abolish the federal minimum wage in favor of state-determined minimum wages. On my first job I received a sub-minimum wage. In the subsequent two positions I held I received the federal minimum wage. I considered that wage much too low and was elated and grateful when it was increased. Similarly, I appreciated the federal minimum wage when my daughter was employed in one of her first jobs. My personal view regarding the federal minimum wage is that the federal government should allow the states far greater flexibility to set the minimum wage rate in their states and any increase should be carefully considered so that it will not hinder job creation.

**Question Two:**

In your capacity as an employee of the Chamber of Commerce, you also made public statements regarding anti-discrimination laws. For example, it has been reported that, on behalf of the Chamber, you opposed provisions of the 1991 Civil Rights Act that provide compensatory damage remedies and jury trials for violations of the Americans with Disabilities Act and also advocated a policy that would exempt employers who hired former welfare recipients from the employment discrimination laws for 18 months (Washington Times, November 5, 1991; Daily Labor Report, February 10, 1995).

Are these reports correct? If not, how are they inaccurate?

Do you currently adhere to these views? If not, what is your view on these issues? Would you personally advocate for the adoption of a limited employment law exemption for employers who hired long-term welfare recipients?

**Answer:**

The above-cited reports are essentially correct. It is my personal view that employers should focus on compliance with the law.

**Question Three:**

In your response to the Pre-hearing Questionnaires, you say that you believe President Bush nominated you because of your qualifications, knowledge of labor issues and your willingness to achieve the goals of the President's and his management agenda.

First, do you agree with the President's management agenda? Second, what is the President's management agenda, as you understand it?

And third, do you disagree with the agenda in any way. Whether you do or do not, please explain fully.

**Answer:**

I agree with the President's management agenda. The basic principles of the agenda include good beginnings, completion, performance and results. Especially performance and results. The President's agenda covers 71 pages and would be difficult to summarize here. However, the focus of the document is results and performance essential to achieve those results. Results such as, but not limited to: evidence showing achievement of goals, effective management of the government's wealth of human capital, greater savings and performance through competition and innovation, more effective management of financial resources, much broader use of electronic devices, improved financial accountability and performance, and, most importantly, a far more customer-focused government providing ample services without redundancy or other forms of waste.

I have read the President's entire Management Agenda. I cannot find any provision with which I disagree. I look forward to working with the President's team to achieve the objectives of his management agenda and his administration. I am deeply honored and extremely grateful that he has asked me to be a part of his team.

**Question Four:**

In your response to the Pre-hearing Questionnaires, you indicated that in the 1990s you became involved in the National Coalition on Ergonomics (NCE). And, you said that this involvement began before OSHA's plans to develop and promulgate standard regarding ergonomics. You wrote that "the NCE maintained throughout the 1990s, and to date, that there is not adequate and sound scientific basis upon which to base comprehensive ergonomics standards."

Do you agree with that statement? And, what assurances can you give federal employees that in your capacity as General Counsel of the Federal labor Relations Authority, that you will be objective regarding federal workers' concerns about workplace safety?

**Answer:**

Clarification: I first became involved as a Chamber representative on the National Coalition on Ergonomics (NCE) in approximately late 1993. This was after Secretary of Labor Dole had raised the ergonomics issue in the Bush Administration but before OSHA in the Clinton Administration promulgated its first proposed ergonomics standard. The NCE maintained throughout the 1990s and to date, that there is not an adequate and sound scientific basis upon which to base a comprehensive ergonomics standard.

While I may have concerns about the wisdom of promulgating a comprehensive OSHA ergonomics standard at this time, I firmly believe that all employers can and should take steps to reduce work-related MSDs. If confirmed I will fully and fairly evaluate all charges involving workplace safety.

**COMMENT:**

Thank you for the opportunity to responds to your questions. I will be happy to provide additional responses, clarify these and previous responses, and answer any other questions you may have.

**Post-Hearing Questions for the Record  
Submitted by Senator Daniel K. Akaka  
for Peter Eide, Nominee for General Counsel  
Federal Labor Relations Authority**

**April 10, 2003**

**Question 1:**

In 1999, in reference to announcements that the Occupational Safety and Health Administration would propose new rules to protect whistleblowers who complain of health and safety hazards, you were quoted as saying that the proposals would “open the floodgates to meritless charges,” and that “[p]laintiffs’ lawyers are all too willing to sue an employer with no intention of getting a verdict, simply to blackmail the employer, to force him to pay off the plaintiff.” (Seattle Post-Intelligencer, March 15, 1999)

While the Federal Labor Relations Authority General Counsel has no role in traditional title 5 whistleblower cases, section 7116(a)(4) in chapter 71 of title 5 defines an unfair labor practice as disciplining an employee because they filed a complaint or gave testimony on matters under that chapter. This is similar to 2302(b)(9) whistleblower cases which prohibit retaliation for the exercise of any appeal, complaint, or grievance right permitted by law or testifying on any of these matters.

Due to recent court decisions that have limited the rights of federal whistleblowers, my colleagues and I are working to strengthen the protection afforded to whistleblowers as a way to eliminate government waste, fraud, and abuse. Your 1999 comments raise questions of how you would handle unfair labor practices under section 7116(a)(4). For the record, how would you define a meritless charge or a frivolous case in determining whether to proceed with an alleged unfair labor practice under section 7116(a)(4)?

**Answer:**

Any charge alleging a violation of Sec. 7116(a)(4), or any other section of the Federal Service Labor-Management Relations Statute, would have to be thoroughly investigated by the General Counsel. Such investigation would necessarily involve not merely the charging party’s initial allegations but also the much broader evidence which goes to agency conduct which could constitute prohibited “otherwise discriminate” conduct. Such conduct may not be apparent to even the charging party. Only after a thorough and intensive investigation revealed a total absence of evidence or basis in law and fact that could even suggest a violation of the Statute occurred would it be appropriate to find a charge meritless. If there is evidence that violation occurred, and absent unusual circumstances (e.g., flagrant non-cooperation by the charging party, statute of limitations, etc.), the General Counsel should aggressively pursue an appropriate remedy.

**Question 2:**

In 1996, amid talks to increase the minimum wage, you were quoted as saying that those most likely to be hurt by raising the minimum wage would be the people now on welfare who attempt to enter the workforce with “few skills, little or no experience, and absolutely no work ethic.” (San Antonio Express-News, April 28, 1996). Prior to that, you supported a waiver of employment laws for hiring welfare recipients so as to prevent recipients from filing unwarranted ‘nuisance suits.’ This latter comment was made in support of the Chamber of Commerce white paper which said, “[w]ith good reason, employers are unwilling to hire individuals who have been receiving something for nothing when they can continue that lifestyle merely by filing an all-expense paid lawsuit through which they can obtain a fortune.” (Bureau of National Affairs, Daily Labor Report, February 10, 1995).

In 1997 President Clinton directed the heads of the federal government's executive departments and agencies to move people off the welfare rolls into federal jobs using available hiring authorities. According to the Office of Personnel Management, from 1997 until 2001, the federal government hired over 52,000 welfare recipients. With the possibility that some of these former welfare recipients may be involved in matters that come before you and in light of your earlier comments pertaining to their work ethic, could you, for the record, tell us if you still adhere to the views expressed above? If so, how will it affect your objectivity in addressing labor-management issues for these employees?

**Answer:**

I expressed the genuine concerns of many Chamber members concerning what at the time appeared to be a likely significant increase in the number of employment-related lawsuits. In hindsight, those concerns appear unwarranted. I do not share those employers' concerns and would opt instead to encourage employers to take advantage of the abilities and initiative of former welfare recipients by employing them.

As a former welfare recipient and former federal employee, I am acutely aware of the need for employers, government or private-sector, to disregard one's past or present need for public assistance of any kind.

**Question 3:**

Employees and their representatives will depend on the General Counsel to defend their rights and protect employees from alleged unfair practices by management. Historically, this has been the primary focus of the General Counsel's responsibility. Your experience in the private sector, including 13 years with the U.S. Chamber of Commerce where you worked to develop and implement business community positions on proposed labor and employment regulations and legislation, was generally in opposition to the positions held by employee unions. The American Federation of Government Employees and the National Treasury Employees Union have



expressed concern over your objectivity as a result of these activities.

How can you assure employees, and the Senate, that you can fulfill the role and responsibilities of the General Counsel effectively and in an unbiased manner, in light of your record at the U.S. Chamber of Commerce advocating against the interests of employees and their representatives?

**ANSWER:**

While employed at the U.S. Chamber of Commerce, I advocated the properly developed positions of that organization, the membership of which is composed almost exclusively of employers and employer associations. To my knowledge, the positions of the Chamber and its members were never developed or adopted with the purpose of being "against the interests of employees or their representatives." Rather, those positions were in the interests of the Chamber's members.

That I advocated the positions of my employer and its members in no way affects my ability to fairly and effectively enforce the Federal Service Labor-Management Relations Statute (FSLMRS) and/or any other federal law or regulation. In fact, my career clearly demonstrates that I effectively and efficiently enforced the National Labor Relations Act and other federal laws for several years. If confirmed it is my intention to enforce the FSLMRS and all other federal laws in a fair, objective, thorough, efficient and effective manner.

**COMMENT:**

Thank you for the opportunity to respond to your questions. I will be happy to provide additional responses, clarify these and previous responses, and answer any other questions you may have.



# AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

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**Bobby L. Harnage**  
National President

**Jim Davis**  
National Secretary-Treasurer

**Andrea E. Brooks**  
Director, Division of  
Fair Practices Department

8d/125714

April 9, 2003

The Honorable Daniel Akaka  
Committee on Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Senator Akaka:

On behalf of the American Federation of Government Employees, AFL-CIO, I am writing to express our opposition to the nomination of Peter Eide to be General Counsel of the Federal Labor Relations Authority (FLRA).

The General Counsel of the FLRA is, in effect, the chief prosecutor of unfair labor practices. Over 80% of unfair labor practices in the federal sector are filed by unions. The General Counsel of the FLRA, therefore, is primarily called upon to enforce the labor statute on behalf of unions. Mr. Eide's career, for over the past decade, would indicate that he is ideologically incapable of performing this task.

In this regard, our review of his resume clearly shows that Mr. Eide has spent the last twelve years working for the Chamber of Commerce as the chief architect of every Chamber effort opposing every labor initiative. From his opposition to Senator Edward Kennedy's ergonomics initiative to promoting a diminution of Fair Labor Standards Act and Equal Employment Opportunity protections, Mr. Eide's efforts have been dedicated 100% of the time to opposing the labor movement and worker-friendly statutes.

Section 7101, the "findings and purpose" section of the Federal Service Labor-Management Relations statute, states that:

"(a) The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest.

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest."

AFGE respectfully submits that Mr. Elde's entire adult career is inexorably inconsistent and opposed to the stated Congressional "findings and purpose" of Section 7101, and his nomination should be opposed.

Sincerely,



Bobby L. Harnage, Sr.  
National President



March 26, 2003

Honorable Daniel K. Akaka  
United States Senate  
Washington, DC 20510

Re: Nomination of Peter Eide to be  
General Counsel of the  
Federal Labor Relations Authority

Dear Senator Akaka:

The National Treasury Employees Union, the largest independent union of federal employees, respectfully opposes the nomination of Peter Eide to be General Counsel of the Federal Labor Relations Authority (FLRA).

As members of the Governmental Affairs committee are aware, the General Counsel of the FLRA is charged with enforcing the provisions of the Federal Sector Labor-Management Relations Statute (FSLMRS). The General Counsel directs the operations of the FLRA's regional offices in their investigation of unfair labor practices and in their conduct of representation matters, such as running elections and making appropriate unit determinations. The General Counsel is the prosecutor for the FLRA; the incumbent determines, in the first instance, whether to pursue alleged misconduct and, if so, under what legal theory. The refusal of the General Counsel to issue a complaint on an alleged unfair labor practice charge is unreviewable. If the General Counsel does issue a complaint, he or she controls the course of the litigation before the FLRA.

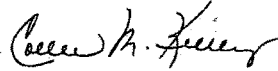
Mr. Eide, in our opinion, is not qualified to perform the important responsibilities of the position of General Counsel. Although the General Counsel is the chief prosecuting lawyer for the FLRA, Mr. Eide has not been a practicing lawyer since 1990. Moreover, his legal experience up to that date was confined to private sector labor relations. There is nothing in his record that indicates any experience whatsoever in federal sector labor relations, which differs in many major respects from its private sector counterpart.

Perhaps even more troubling to NTEU, Mr. Eide's work for the last twelve years has been as an advocate for the dilution of statutory protections for employees. As Manager and then Director of Labor Law Policy for the Chamber of Commerce, Mr. Eide has worked to oppose OSHA regulations on safety and health programs. For example, he has proudly pointed to his role in spearheading a coalition of businesses and associations opposing OSHA ergonomics regulations. He has also worked vigorously to undermine the Fair Labor Standards Act and to amend Title VII of the Civil Rights Act of 1964. In short, there is nothing in this record to indicate that Mr. Eide would energetically enforce the statutory protections of the FSLMRS, if confirmed as General Counsel.

The General Counsel of the FLRA operates, to a large extent, without review by the members of the Authority or by any court. If he refuses to pursue allegations of misconduct, the injured entity has no other legal recourse. This broad prosecutorial discretion makes the incumbent an extremely powerful figure in federal sector labor relations. It should not be entrusted to one whose career has been devoted to advocacy of diminution of statutory protections for workers.

NTEU therefore asks you to oppose the nomination of Peter Eide to be General Counsel of the FLRA.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Colleen M. Kelley". The signature is fluid and cursive, with the first name "Colleen" being more prominent.

Colleen M. Kelley  
National President

**ASSOCIATION OF ADMINISTRATIVE LAW JUDGES, INC.**

Henry Reuss Federal Plaza, Suite 880  
310 W. Wisconsin Avenue  
Milwaukee, WI 53203  
(414) 270-9646

August 1, 2002

The Honorable Joseph I. Lieberman  
United States Senate  
Chair, Senate Governmental Affairs Committee  
Hart Building  
2<sup>nd</sup> & C Streets, NE  
Washington, D.C. 20510


Dear Senator Lieberman:

I write on behalf of the Association of Administrative Law Judges, International Federation of Professional and Technical Engineers, AFL-CIO in support of Mr. Peter J. Eide who the President has nominated for the position of General Counsel of the Federal Labor Relations Authority.

We support the nomination of Peter Eide for the position of General Counsel for the Federal Labor Relations Authority and urge that his nomination be confirmed by the Senate Governmental Affairs Committee. Peter Eide has the sound judgment, leadership skills, and high ethical standards required to perform the substantial responsibilities of this position. The person serving in this position develops policy and makes decisions that will have a profound impact on all Federal employees. Peter Eide is an accomplished and experienced labor lawyer who will enforce and apply the Federal employee labor law in a fair and equitable manner. He will invoke the letter and spirit of the labor law in a manner that protects the interests and rights of both Federal employees and agencies.

I thank you for your consideration of this important appointment and again urge that the Senate Governmental Affairs Committee confirm the nomination of Peter Eide to the position of General Counsel of the Federal Labor Relations Authority.

Respectfully,

  
Ronald G. Bernoski  
President